

THE CHARTER BOARD OF THE CITY OF READING

IN RE: The Filling of Vacancies : Request Received November 21, 2013
 Under Charter §§ 304 :
 and 505 : Advisory Opinion No. 35

ADVISORY OPINION

I. PROCEDURAL HISTORY AND QUESTIONS PRESENTED

By letter dated November 21, 2013 the City Clerk, Linda A. Kelleher, (“Clerk”) requested an advisory opinion from the Charter Board of the City of Reading (“Board”). By letter of December 5, 2013 the Board requested that the Clerk grant the Board a thirty (30) day extension, ending January 22, 2014, in which to issue the requested advisory opinion. The Clerk agreed by a returned written acknowledgement. As the result of inclement weather, the Board requested, and the Clerk granted, a further extension from January 22, 2014 to February 5, 2014.

The substantive issue of the Clerk’s request concerns Sections 304 and 505 of the Home Rule Charter of the City of Reading (“Charter”) and the provisions found there for the filling of vacancies in the offices of Mayor and City Auditor. As the Clerk points out, those Charter sections do not contain any provisions for the timing of the filling of vacancies in those offices, the qualifications or eligibility of the proposed appointee, or the vote necessary to fill such vacancies (i.e., majority, 2/3 vote, etc.).¹ The Clerk asks the Board to clarify what provisions, if any, apply to filling a vacancy in the office of Mayor and City Auditor.

The Board answers the Clerk’s request for an advisory opinion as follows.

¹ The Clerk correctly notes that this lack of detail is not found in the provision for the filling of a vacancy on City Council. *See* Charter § 207.

II. DISCUSSION

A. Pertinent Provisions of the Charter

1. The Office of Mayor

Charter § 304, concerning a vacancy in the office of Mayor, states:

Section 304. Vacancy.

(a) If the office of the Mayor becomes vacant for any reason, Council shall appoint an interim Mayor who shall serve until the next Municipal Election.

(b) A vacancy in the office of Mayor shall be filled at the next Municipal Election, in the manner provided by law. The person elected shall hold the qualifications for the office of the Mayor and shall serve the remaining portion of the vacated term.

Concerning qualifications for a candidate for Mayor, Charter § 303 provides:

Section 303. Eligibility.

The candidate for Mayor shall be a registered voter of the City who shall have resided in the City continuously for at least one year immediately preceding the primary election in which the Mayor seeks office. The Mayor shall continue to reside in the City throughout the term of office.

2. The Office of the City Auditor.

Charter § 505, concerning a vacancy in the office of the City Auditor, states:

Section 505. Vacancy.

(a) If the office of the City Auditor becomes vacant for any reason, Council shall appoint an interim City Auditor who shall serve until the next Municipal Election.

(b) A vacancy in the office of City Auditor shall be filled at the next Municipal Election, in the manner provided by law. The person elected shall hold the qualifications for the office of the City Auditor and shall serve the remaining portion of the vacated term.

Concerning the qualifications for a candidate for City Auditor, Charter § 502 provides:

Section 502. Eligibility.

The candidate for City Auditor shall be a registered voter of the City who shall have resided in the City continuously for at least one year immediately preceding the primary election in which the City Auditor seeks office. The City Auditor shall continue to reside in the City throughout the term of office. In addition, the City Auditor must have a Bachelors Degree in Business Administration, Municipal Government, Accounting, Management or a related field. The City Auditor elected at the first election under this Chapter shall receive an annual salary of \$40,000.00.

B. Analysis

The Charter Board Ordinance² (C.B.O.) directs the Board's interpretation of the Charter. *See* C.B.O. § IV(A). The object of all interpretation and construction of the Charter is to ascertain and effectuate the intent of its authors. When the words of the Charter are clear and free from ambiguity, the letter of it shall not be disregarded in pursuit of its spirit. Likewise, when the Charter is not explicit, the intent of its authors shall be ascertained by considering: (a) the mischief to be remedied; (b) the object to be attained; (c) the circumstances under which it was enacted; and (d) the contemporaneous legislative history. *Id.* The Statutory Construction Act, 1 Pa.C.S. §§ 1501, *et seq.*, serves as a refinement of the above standard. C.B.O. § IV(C).

As explained in *City Council of the City of Reading v. Eppihimer*:

In addition, this Court has held that general rules of statutory construction are applicable in interpreting provisions of a home rule charter. *Williams v. City of Pittsburgh*, 109 Pa.Cmwlth. 168, 531 A.2d 42, 44 (1987) (citing *Cottone v. Kulis*, 74 Pa.Cmwlth. 522, 460 A.2d 880 (1983)), *petition for allowance of appeal denied*, 518 Pa. 622, 541 A.2d 748 (1988). We must interpret statutes to ascertain and effectuate the intent of the legislature and, if possible, give effect to all of its provisions. Section 1921(a) of the Statutory Construction Act of 1972, 1 Pa.C.S. § 1921(a). Further, if the words of a statute are clear and unambiguous, a court may not ignore the letter of the law under the pretext of pursuing its spirit. 1 Pa.C.S. § 1921(b); *Ramich v. Workers' Compensation Appeal Board (Schatz Electric, Inc.)*, 564 Pa. 656,

² Ord. No. 46-2005, *as amended* by Ord. No. 16-2013

770 A.2d 318 (2001). This Court must presume that the drafters of the charter did not intend a result which is absurd, impossible of execution or unreasonable. *Cottone*, 460 A.2d at 882.

City Council of the City of Reading v. Eppihimer, 835 A.2d 883, 887 (Pa. Commw. Ct. 2003) (interpreting the Charter).

The pertinent standards for statutory construction are as follows:

The object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly. Every statute shall be construed, if possible, to give effect to all its provisions.” 1 Pa.C.S. § 1921(a); *Commonwealth v. McCoy*, 599 Pa. 599, 962 A.2d 1160, 1167–68 (2009). A statute's plain language generally provides the best indication of legislative intent. *McCoy*, 962 A.2d at 1166; *Ephrata Area Sch. Dist. v. County of Lancaster*, 595 Pa. 111, 938 A.2d 264, 271 (2007); *Pennsylvania Fin. Responsibility Assigned Claims Plan v. English*, 541 Pa. 424, 664 A.2d 84, 87 (1995) (“Where the words of a statute are clear and free from ambiguity the legislative intent is to be gleaned from those very words.”). Only where the words of a statute are not explicit will we resort to other considerations to discern legislative intent. *Ephrata Area Sch. Dist.*, *supra*; see also 1 Pa.C.S. § 1921(c); *In re Canvass of Absentee Ballots of Nov. 4, 2003 Gen. Election*, 577 Pa. 231, 843 A.2d 1223, 1230 (2004). Moreover, in this analysis, “[w]e are not permitted to ignore the language of a statute, nor may we deem any language to be superfluous.” *McCoy*, 962 A.2d at 1168. Governing presumptions are that the General Assembly intended the entire statute at issue to be effective and certain, and that the General Assembly does not intend an absurd result or one that is impossible of execution. See 1 Pa.C.S. § 1922(1)-(2).

We are also mindful that statutes which relate to the same persons or things must be construed together as one statute. See 1 Pa.C.S. § 1932. “[S]ections of a statute must be read together and in conjunction with each other, and construed with reference to the entire statute.” *Housing Auth. of County of Chester v. Pa. State Civil Serv. Comm'n*, 556 Pa. 621, 730 A.2d 935, 945 (1999). A word or phrase whose meaning is clear when used in one section of a statute will be construed to mean the same thing in another section of the same statute. *Id.* at 946.

Board of Revision of Taxes, City of Philadelphia v. City of Philadelphia, 607 Pa. 104, 4 A.3d 610 (2010). Although a court should construe a statute, if possible, to give effect to all of its

provisions, a court may not supply a provision omitted from a statutory section even if the omission resulted from the General Assembly's inadvertence or failure to foresee the circumstances in question. *Lisanti Painting Co. v. W.C.A.B. (Starinchak)*, 973 A.2d 464, 471 (Pa. Commw. Ct. 2009), *appeal denied* 603 Pa. 697, 983 A.2d 730 (2009). Courts may not add provisions that the General Assembly has omitted unless the phrase is necessary to the construction of the statute. *Commonwealth v. Lewis*, 885 A.2d 51, 57 (Pa. Super. Ct. 2005), *appeal denied* 588 Pa. 777, 906 A.2d 540 (2006).

Here, absent from Charter §§ 304 and 505 are provisions for the timing of the filling of vacancies in those offices, the qualifications or eligibility of the proposed appointee, and the vote necessary to fill such vacancies (i.e., majority, 2/3 vote, etc.). The Board will address each of these matters separately, applying the above cited long-standing principles of statutory construction.

1. Timing

Both Sections 304 and 505 of the Charter are silent as it relates to the timing of the appointment of a Mayor or a City Auditor by City Council in the event of a vacancy. The Charter contains not less than five (5) references to the appointment of candidates to fill vacancies.³ Only the Charter section for the filling of a vacancy in City Council has a specific time parameter, i.e. thirty (30) days. Charter § 207. Clearly the drafters of the Charter knew that they could provide for a time in which to mandate that a vacancy be filled by Council. Yet the drafters inserted no such provision for vacancies in the offices of Mayor and City Auditor.

³ See Charter §§ 207 (vacancies on City Council to be filled within 30 days), 304 (vacancy in the office of Mayor, stating no time frame), 403, 505 (vacancy in the office of City Auditor, stating no time frame), 1002(b) (vacancies on Boards and Commissions to be filled promptly).

The Board can render no advisory opinion as to the permitted time in which City Council must fill these vacancies. As *Lisanti Painting Co.* and *Lewis, supra.*, prohibit, the Board may not insert a term into the Charter. The Board does not find the lack of a time frame for the filling of a vacancy to cause ambiguity or to prevent an interpretation of Charter §§ 304 and 505 under their terms as written. Further, should City Council not act promptly in filling any such vacancy, presumably a determination will be made at the ballot box for any actual or perceived tardiness. It is not for the Board to legislate and insert a time frame by which Council must act.

Regarding timing, the Charter is clear only that City Council shall fill vacancies in the offices of Mayor and City Auditor. The Board can opine no further on the issue of timing.

2. Qualifications

Neither Charter §§ 304 or 505 have any requirement that the person appointed to fill a vacancy in the offices of Mayor or City Auditor be “qualified.” However, to be sure, there are qualifications for those offices as set out in Sections 303 and 502, both regarding “eligibility.” Both referenced sections require the candidates for those offices to meet the minimum qualifications. See Charter §§ 303, 502, *supra.* Black’s Law Dictionary, 6th ed., defines “candidate” as “one who seeks or offers himself, or is put forward by others, for an office, privilege, or honor. A nominee.” (internal citations omitted).

It appears to the Board that it is the law of Pennsylvania that a person appointed to fill a vacancy must hold the statutory qualifications to fill the office. See *generally as to qualifications for office, Commonwealth ex rel. Kelley v. Keiser*, 340 Pa. 59, 70-71, 16 A.2d 307, 311-12 (1940). Qualifications for the offices of Mayor and City Auditor exist under the Charter, therefore a candidate for appointment to fill a vacancy in those offices must meet those stated qualifications. Reading Charter Articles III and V together, to give effect to all of their

provisions, would require that the qualifications found in Sections 302 and 504 would equally apply to appointments to fill vacancies in those offices. It would be an absurd result that an appointee to a vacancy need not hold the qualifications for the office to which he or she is appointed. 1 Pa.C.S. § 1922(1).

3. The Vote of Council

The Board recently addressed voting of City Council in the context of appointments to the Charter Review Commission. *See* Adv. Op. No. 33 (May 9, 2013). There the Board concluded that motions or resolutions voted upon by City Council must garner a simple majority of a quorum to prevail, unless otherwise provided by law, the Charter or an Ordinance. Admin. Code § 1-122(9). *See DiGiacinto v. City of Allentown*, 486 Pa. 436, 439, 406 A.2d 520, 522 (1979); *Ronald H. Brown Charter School v. Harrisburg City School District*, 928 A.2d 1145, 1147-48 (Pa. Commw. Ct. 2007). Advisory Opinion No. 33 opines that the common law rule for the number of votes necessary for a deliberative body to take official action applies to making appointments to the Charter Review Commission. The Board applies and adopts that same analysis here in opining that the common law rule would also apply to the filling of vacancies, specifically, vacancies in the offices of Mayor and City Auditor. Therefore, to fill a vacancy, a majority of a quorum of City Council must vote in favor of the candidate.

III. OPINION OF THE BOARD

It is the Opinion of the Board that:

A. the Charter is silent as to the timing of the appointment by City Council to fill a vacancy in the offices of Mayor and City Auditor and the Board cannot opine upon, or insert, a time frame;

B. an appointee to fill a vacancy in the offices of Mayor and City Auditor must possess the qualifications and be eligible, in accordance with Charter §§ 302 and 504, to hold the office to which appointment is made;

C. an affirmative vote of a simple majority of a quorum of City Council must be had to fill a vacancy in the offices of Mayor and City Auditor, as the Charter provides for no other description of the votes necessary to fill such a vacancy and therefore the common law rule is applicable.

CITY OF READING CHARTER BOARD

By: *Susan T. Gibson*
Susan Gibson, Chair

Date: February 5, 2014